

**Environmental Assessment
Environmental Review Agreement Template
September, 2009**

The following are general terms and conditions typically used by Western in an “Environmental Review Agreement” for an Environmental Assessment (EA). These clauses will be used in addition to those required under Western’s Open Access Transmission Tariff (OAT), and specifically Attachment J to the OATT.

As indicated below, not all clauses are applicable to each project and other clauses may require a choice of the appropriate clause (e.g., A or B). Western has attempted to provide a broad example of most of the provisions required in an Environmental Review Agreement. The following is meant to be a template and may be modified based on the unique needs of a specific project.

In addition, Western is required to comply with federal law, including the National Environmental Policy Act (NEPA), and, if Western determines specific steps and/or provisions are required that are not addressed in the template, Western may add those provisions necessary to comply with federal law. The scoping process could result in a determination that a higher level of environmental review is required and, in that situation, Western will need to re-negotiate the terms of the environmental review document. Finally, additional costs and delay may occur if the customer proposes changes to the project after the initiation of the environmental review.

Further information on Western’s environmental compliance and its responsibility under NEPA can be found in Western’s “General Request for Interconnection.”

1. Western, at the Customer’s sole expense, shall:

- 1.1 **A.** Provide a statement of work that the customer may use to obtain an environmental contractor for the preparation of the environmental assessment (EA), cultural survey and biological reports (as required by the U.S. Fish and Wildlife Service, state wildlife agencies, or State Historic Preservation Office) and Administrative Record.

OR

B. Western will procure an environmental contractor for the preparation of the environmental assessment (EA), cultural survey and biological reports (as required by the U.S. Fish and Wildlife Service, state wildlife agencies, or State Historic Preservation Office) and Administrative Record.

- 1.2 Provide technical direction to Customer environmental contractor, as selected under 1.1A. Review and approve survey results, draft and final reports, and draft and final EA .

- 1.3 Follow the Department of Energy and Council on Environmental Quality regulations in 10 CFR 1021 and 40 CFR 1500-1508 and associated guidance in providing direction in completion of the EA under 1.1.
- 1.4 Undertake consultation in accordance with Section 106 of the National Historic Preservation Act and ensure compliance with appropriate cultural and historic preservation requirements.
- 1.5 Undertake consultation in accordance with Section 7 of the Endangered Species Act and ensure compliance with appropriate endangered species requirements.
- 1.6 Undertake consultation with affected American Indian Tribes to comply with applicable requirements to ensure that Federal trust responsibilities are met.
- 1.7 Take appropriate action to ensure that applicable provisions of the Clean Water Act, Wetlands Protection Act, Floodplains Management Act, and the DOE Floodplain/Wetland environmental review requirements (10 CFR 1022) are achieved.
- 1.8 Attend meetings with local, state and appropriate Federal agencies as required where matters of Western's policy and environmental review requirements are discussed.
- 1.9 Based on studies conducted under the EA, independently determine if mitigation measures proposed by the Customer are adequate to reduce significant adverse environmental impacts caused by the Project. Provide direction in preparation of a mitigation action plan, including a schedule and associated costs for mitigation actions to be completed by the Customer. In the event it is determined that mitigation measures proposed by the Customer are inadequate or additional work is required, collaborate with the Customer to meet the additional requirements. The Customer will be responsible for implementing the mitigation action plan and providing progress reports and a final mitigation action plan close-out report as provided by Sections 2.8 – 2.10 below.
- 1.10 Prepare a "Finding of No Significant Impact" (FONSI) document if appropriate or determine whether an Environmental Impact Statement (EIS) is required. If an EIS is required, Western and the Customer will then discuss and evaluate steps necessary to proceed.
- 1.11 Review and make any additions or deletions to the Administrative Record and/or documents provided by customer under 2.11. Western shall make a final determination as to the contents of the Administrative Record.

2. The Customer at its sole expense, shall:

2.1 Within 30 calendar days of signing this Letter Agreement:

- 2.1.1 Advance the funds identified in Section ____.
 - 2.1.2 Provide a contact for the environmental review, including name, address and phone number.
 - 2.1.3 Provide a proposed project timetable for submitting required environmental studies, documents and other information to Western.
 - 2.1.4 Implement periodic coordination meetings or teleconferences with Western for the purposes of discussing progress on the environmental review, identify issues, and ensure timely information exchanges.
 - 2.1.5 Provide a proposed layout of the project on a map base of U.S. Geological Survey 7.5 minute quadrangle or equivalent; that includes but is not limited to: locations of generation facility, location of access roads for construction and maintenance; location of meteorological towers; support buildings, transmission lines, substations and other constructed facilities.
 - 2.1.6 Provide a description of the project including, but not limited to: nameplate generation capacity, purpose and need for generation, generation technology employed, any alternative technology or alternative sites considered, transmission line voltages, lengths and structure type, square footage of buildings, substations and other associated structures, location of access roads and underlying landownership.
 - 2.1.7 Provide a copy of all public notification and correspondence completed to date.
- 2.2 Perform (under 1.1A) or fund (under 1.1B) all required surveys and studies required for the EA and other environmental review and approval requirements (e.g., cultural resource surveys, biological monitoring, wetland delineation etc.
- 2.3 Provide a description of the Customer's best management practices and standard operating procedures, standard construction practices, and standard mitigation measures.
- 2.4 Proposed special mitigation measures (beyond the Customer's standard

mitigation measures and best management practices) that may be needed to reduce significantly adverse impacts to a lower threshold.

- 2.5 **A.** Under 1.1A, compile the EA according to the format and guidance provided by Western.

OR

B. Under 1.1B, provide funding for Western procurement of Environmental Contractor.

- 2.6 Notify Western at least 90 days prior to taking any action that may have a material adverse environmental impact (e.g. ground disturbing activities) or that may limit the choices of reasonable alternatives so that Western may consider interim action approval as required by DOE regulations at 10 CFR 1021.211.
- 2.7 Acquire licenses, permits, clearances, and right(s)-of-way required for all parts of the Project.
- 2.8 Prepare a draft and final mitigation action plan.
- 2.9 Consider in good faith and concur with mitigation measures developed by Western as described in the EA and adopted in the FONSI, including the funding of Western's portion of the mitigation action plan (10 CFR 1021.331).
- 2.10 The Customer shall implement the mitigation action plan and provide progress reports and a final mitigation action plan close-out report prior to being relieved of obligations under this Subsection.
- 2.11 **A.** Under 1.1A, provide Western with an Administrative Record that documents all correspondence related to the review, meetings and meeting summaries, copies of all information provided to stakeholders, copies of correspondence received, copies of reports, data and other information produced by the Customer to support the environmental reviews, oral and written comments received from stakeholders; results of coordination with local, state, and appropriate Federal agencies, landowners and other interested citizens or groups (e.g. environmental groups).

OR

B. Under 1.1B, provide Western with all documents, including but not limited to all correspondence related to the review, meetings and meeting summaries, copies of all information provided to stakeholders, copies of correspondence received, copies of reports, data and other information produced by the Customer to support the environmental reviews, oral and

written comments received from stakeholders; results of coordination with local, state, and appropriate Federal agencies, landowners and other interested citizens or groups (e.g. environmental groups) so that Western may complete an Administrative Record, at the Customer's sole expense.

- 2.12 Provide Western with progress reports at no greater than monthly intervals that describe ongoing studies and work; completed studies and tasks; correspondence between the Customer and local, state and federal agencies with interest in or jurisdiction over the project; identified issues; project schedule changes; and other information relevant to accomplishing the environmental review.
- 2.13 Continually work toward accomplishing the environmental review or Western will delay its decision on the application.
- 2.14 If Western notifies the Customer in writing (including e-mail) that specific information or action relevant to the environmental review is required from the Customer by a specific date and, in Western's judgment, that information is not received, or the action not completed, on the date required by Western, Western then will provide the Customer a "Notice of Suspension." The Notice of Suspension will notify the Customer in writing that, from that date forward, Western is suspending all activity on the environmental review until Western receives written notification from the Customer to re-commence environmental review (referred to as "Written Notice to Re-Commence"). Once Western receives the Written Notice to Re-Commence, Western then will have sixty days to prepare a revised schedule. The revised schedule will delay any prior schedule for the duration of the "on hold period" which is the date of Western's Notice of Suspension until the Written Notice to Re-Commence was received by Western plus sixty days. By executing this agreement, the Customer is aware that delay can result from the Customer's non-responsiveness during the environmental process and the Customer acknowledges that Western is under no obligation to expedite the environmental review once Western receives the Notice to Re-Commence. Following the Notice of Suspension, Western also may, in its discretion, deem the Customer's Interconnection Request withdrawn.
- 2.15 Customer understands Western's NEPA process and NEPA decision could be subject to litigation. As part of that litigation, a court could take an action including but not limited to, issuing an injunction enjoining Western's actions and enjoining any commitment of resources associated with Western's actions or ordering Western to conduct additional environmental review. Customer understands such court orders could be issued after Western executes its Record of Decision and that such court orders, including but not limited to injunctions, could result in delay. Customer agrees it is responsible for any and all monetary damages, including any and all costs and expenses,

the Customer may incur as a result of any such court orders, including delay resulting from such court orders.